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IN THE

Supreme Court of the United States

October Term, 1979.

No. 79-343.

SUN SHIP, INC.,

Appellant,

v.

COMMONWEALTH OF PENNSYLVANIA, WORKMEN'S COMPENSATION APPEAL BOARD, JOHN APRIL, CURTIS L. FIELDS, FRANK JANUZCIEWICZ, JOSEPH C. KIMMEL and WILLIE MOORE,

Appellees.

On Appeal From the Commonwealth Court of Pennsylvania.

REPLY BRIEF FOR THE APPELLANT.

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REPLY BRIEF FOR THE APPELLANT

Appellant Sun Ship, Inc. ("Sun Ship") files this reply brief to respond to the argument of Appellees ("claimants") that Congress, without any indication of such an intention, adopted a system of concurrent jurisdiction to apply generally to land-based injuries to maritime workers when it enacted the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act. ("Longshoremen's Act") Pub. L. No. 92-576, 86 Stat. 1251.[1] In addition, the brief discusses the untoward consequences which would flow from a holding that such a system is what Congress intended.

I. Congress Exercises Its Paramount Power to Define the Maritime Law in a Setting Where Uniformity Is the Rule

The briefs filed by claimants and the United States in this Court appear to urge that the principle of uniformity in the maritime law is a dead letter in the context of the Longshoremen's Act. (Brief for the Appellees at 13; Brief for the United States at 8-13). Whether viewed as a constitutional principle or simply a desirable one, it cannot be seriously questioned that maritime matters are imbued with a dominant federal interest and that the substantive federal maritime law should operate uniformly

1. In addition to the brief filed by claimants, two *amicus curiae* briefs supporting claimants' position have been submitted to the Court. The first is attached to a Motion of Amicus Curiae for Leave to File Brief filed by Local No. 6, Industrial Union of Maritime and Shipbuilding Workers of America, AFL-CIO ("Local No. 6") on March 21, 1980. No disposition was made of Local No. 6's motion at the time this brief was prepared. The second has been filed by the United States over Sun Ship's objections set forth in a letter to the Clerk of this Court, dated April 5, 1980. This reply will address the arguments raised in both *amicus* briefs only to the extent that they supplement arguments presented by claimants or to the extent they raise new issues.

throughout the country. *E.g., Moragne v. States Marine Lines,* 398 U. S. 375 (1970); *Southern Pacific Co. v. Jensen,* 244 U. S. 205 (1917); *The Roanoke,* 189 U. S. 185 (1903). In *Nacirema Operating Co. v. Johnson,* 396 U. S. 212, 223 (1969), this Court specifically noted, "There is much to be said for uniform treatment of longshoremen injured while loading or unloading a ship."

The United States also claims that the decision in *Askew v. American Waterways Operators, Inc.,* 411 U. S. 325 (1973) would somehow limit the operation of the uniformity principle in this case because *Jensen* was there confined to its facts. (Brief for the United States at 11-13). This case, like *Jensen,* involves the availability of a compensation remedy for workers injured in maritime employment, and it is difficult to understand why the *Jensen* principle loses its force when carried landward by Congress if the injuries are sustained during the course of traditional maritime activities such as ship repair, shipbuilding or the loading and unloading of vessels. More importantly, Sun Ship's argument is not that the constitutional principle of *Jensen* requires a finding of preemption here, but rather that when Congress exercises its paramount power to define the substantive maritime law in either in tort, contract or both, the desirability of uniformity in the maritime law should be observed.

That Congress was acting against this background is demonstrated by the language added to the Act in 1972 which is wholly ignored in the briefs supporting claimants' position. As discussed at pages 19 through 22 of Sun Ship's opening brief, Congress defined the term "employee" in section 2(3) of the Act, 33 U. S. C. § 902(3), affirmatively to include any longshoreman and any harborworker, thereby exercising its power in maritime contract law. Simultaneously, Congress redefined "navigable waters of the United States," which is the term traditionally defining maritime tort jurisdiction, to include areas landward of the water's edge. Longshoremen's Act §§ 2(4), 3(a), 33 U. S. C. §§ 902(4), 903(a). Thus, in contrast to the expressly limited exercise of legislative power found in *Askew,* Congress affirmatively exercised its full admiralty powers in 1972, choosing language which not only expanded coverage, but which also evidenced an intent to vindicate the principles of uniformity and federal supremacy in maritime matters.

II. There Is Nothing in the Longshoremen's Act to Suggest That Congress Intended to Establish a System of Concurrent Remedies for Land-Based Injuries Occurring to Maritime Workers

There is no question that prior to 1972 the Longshoremen's Act did not provide a remedy for maritime workers injured upon land. *Nacirema Operating Co. v. Johnson,* 396 U. S. 212 (1969). Notwithstanding this fact, claimants and those supporting their position would have this Court hold that Congress in 1972 intended to create a compensation system under which both federal law and state law are competent to provide a remedy for such land-based injuries. They advance this argument without citing any provision in the amended Longshoremen's Act or any statement from the legislative history to support such a result. Rather, the argument is premised upon this Court's decisions construing the Act prior to its amendment in 1972. Contrary to their contention, those decisions did not announce a general doctrine of concurrent jurisdiction nor are they support for such a doctrine today.

Claimants and both *amici* suggest that *Davis v. Washington Department of Labor and Industries,* 317

U. S. 249 (1942), in which the "twilight zone" doctrine was announced, created a system of concurrent jurisdiction prior to 1972. No such conclusion is possible. *Davis* represented a practical solution in cases where it was difficult to determine in the first instance whether a state or federal remedy applied. *Hahn v. Ross Island Sand & Gravel Co.*, 358 U. S. 273, 274 (1959) (Stewart, J., dissenting). However, as to injuries falling on the federal side of the line, the language quoted from *Davis* by claimants at pages 15 and 16 of their brief makes plain that Section 5 of the Act, 33 U. S. C. § 905, renders the federal remedy exclusive. Accordingly, where a claim falls under the Longshoremen's Act, as do the cases at bar, no concurrent state remedy is available under *Davis*. Claimants apparently urge that the "twilight zone" doctrine be extended to all land-based injuries (Brief for the Appellees at 24-25), but such an extension is not warranted given the limited purpose for which the doctrine was created and wholly inapplicable to cases such as these at bar which cannot properly be characterized as "borderline" or "doubtful."

Claimants' reliance upon *Calbeck v. Travelers Insurance Co.*, 370 U. S. 114 (1972) is also misplaced for the simple reason that the Act today does not contain that language which formed the basis for that decision. *See Nations v. Morris*, 483 F. 2d 577, 583 n. 19 (5th Cir.), *cert. denied*, 414 U. S. 1071 (1973). As is fully discussed at pages 33 through 39 of Sun Ship's opening brief, *Calbeck* represented a departure from earlier decisions which had concluded that the proviso in Section 3(a) of the original Longshoremen's Act limiting coverage to those cases where "recovery . . . may not validly be provided by State law" incorporated the "maritime but local" doctrine. In *Calbeck*, this Court stated:

> We conclude that Congress used the phrase "if recovery . . . may not validly be provided by State law" in a sense consistent with the delineation of coverage as reaching injuries occurring on navigable waters.

370 U. S. at 126. Far from judicially deleting this language from the Act, the holding in *Calbeck* relies upon the quoted statutory language.[2]

Moreover, claimants argument that *Calbeck* established a general system of "concurrent not exclusive jurisdiction" (Brief for the Appellees at 13), proves too much. First, *Calbeck* itself did not have occasion to consider the circumstances under which a state remedy might have been available. Second, to the extent *Calbeck* can be read as creating an area of concurrent jurisdiction, that narrow area was only seaward of the water's edge and was necessarily limited to those cases in which this Court had previously recognized the states' competence to provide a remedy under the "maritime but local" exception. Finally, neither *Calbeck* itself nor any subsequent decision of this Court has disturbed the cases which have construed Section 5 of the Act, U. S. C. § 905, to mean that when a claim falls within the coverage of the Longshoremen's Act, the compensation remedy provided there-

2. The United States contends with the deletion of the proviso in Section 3(a) somewhat differently from claimants, arguing that the deletion supports a finding of concurrent jurisdiction. (Brief for the United States at 16-19). The linchpin of that argument is that the proviso was the only language in the unamended Act which supported a mutually exclusive relationship between state and federal coverage. Of course, the very cases upon which the United States relies in making the rest of its argument did not impart such a meaning to the proviso. More fundamentally, the proviso was also the only language which recognized the power of the states to provide a compensation remedy for maritime workers. Therefore, the deletion of the proviso is fully consistent with Congress' intent to replace the two compensation systems—one state, one federal—adjoining at the water's edge with a single, uniform and exclusive federal remedy.

under is exclusive. *Davis v. Washington Department of Labor and Industries,* 317 U. S. at 256; *Nogueira v. New York, New Haven & Hartford R. R. Co.,* 281 U. S. 128 (1930).[3] There is, therefore, no reason to assume that even the *Calbeck* claimants could have pursued a state remedy once it was determined that the Longshoremen's Act applied to their claims. *See Atlas Iron & Metal Co. v. Hesser,* 177 So. 2d 199, 201-02 (Fla. 1965).

The United States argues that this Court's decision in *Industrial Commission of Wisconsin v. McCartin,* 330 U. S. 622 (1947), supports a finding of concurrent jurisdiction under the amended Longshoremen's Act. Neither *McCartin* nor the earlier decision of *Magnolia Petroleum Co. v. Hunt,* 320 U. S. 430 (1943), upon which *McCartin* was based, bear upon the question of whether Congress preempted the states' competence to provide a compensation remedy for maritime workers. Both of those cases involved situations where there was no question that two states were equally competent to provide a compensation remedy to a particular worker for a single injury; the issue resolved was the effect of the Full Faith and Credit Clause of the Constitution, Art. IV, § 1, once one state had exercised jurisdiction and awarded compensation on the claim.

3. The United States, although conceding that an employer's obligation to secure payment under the Act is mandatory, questions whether Section 5(a) can really be read to make the Act's remedy exclusive. (Brief for the United States at 19-20). The short-answer to this query is that Section 5 plainly and unequivocally says it is exclusive. *See Crowell v. Benson,* 285 U. S. 22, 38 (1932) ("The liability [under the Act] is exclusive unless the employer fails to secure payment of the compensation. § 5.") The United States further argues, citing statutes which create compensation remedies against the United States, that Congress knew how to oust state compensation remedies for maritime workers in 1972 if it wanted to do so. Given the decisions which had already construed Section 5(a) to provide a remedy exclusive of state compensation statutes, *e.g. Davis v. Washington Department of Labor and Industries,* 317 U. S. 249, 256 (1942), Congress had no reason to alter Section 5(a) in 1972.

Taken together, *McCartin* and *Magnolia* require that a second state hearing a claim for compensation, after another state had awarded compensation for the same injury is required by the Full Faith and Credit Clause to accord the first compensation award the same effect as would be given by the state in which the award was made. As a result, when the first award "was intended to be final and conclusive of all the employee's rights against the employer and the insurer growing out of the injury," *Industrial Commission of Wisconsin v. McCartin,* 330 U. S. at 626, the second state is precluded from awarding compensation under its statute. Such an intent was found in *Magnolia,* where the Court held Louisiana could not award compensation because a prior award under Texas law was intended to be exclusive of all rights, including rights under the compensation laws of every other state.

Because the principles of full faith and credit are applicable to the federal courts by statute, 28 U. S. C. § 1738, extension of the doctrine announced in *Magnolia* and *McCartin* to a situation involving a state and federal remedy could operate to preclude an award under the Longshoremen's Act for a claimant otherwise entitled to recover thereunder in plain derogation of Congress' intent in 1972. Thus, if a claimant covered by the Longshoremen's Act recovers an award under state law and such award would be held exclusive of all other remedies by the courts of that state, his Longshoremen's Act remedy may be lost. Indeed, this was the result reached in *Landry v. Carlson Mooring Service,* 9 BRBS 518 (1978), *appeal pending,* Nos. 79-1274, 79-1479 (5th Cir.), discussed on pages 56 and 57 of Sun Ship's opening brief. *See Pettus v. American Airlines, Inc.,* 587 F. 2d 627 (4th Cir. 1978) (holding award under District of Columbia Workmen's Compensation Act barred under *Magnolia* doctrine by prior award under Virginia law).

But this result could only obtain if it is determined that states are competent to remedy injuries sustained by workmen otherwise covered by the Longshoremen's Act—that is to say, only if the expansive concurrent jurisdiction for which claimants and the *amici* argue is found to exist. By contrast, the congressional purpose to establish a uniform system is fully vindicated by holding the remedy exclusive under the Longshoremen's Act, which necessarily deprives the states of the opportunity to interfere with a claimant's rights under the Act.

The United States, although recognizing the problem, suggests that the difficulty is solved by holding that the Longshoremen's Act, as supreme federal law, preempts any attempted interference by the states. (Brief for the United States at 26). But this is no solution at all because it ignores the command of 28 U. S. C. § 1738, which requires federal courts to give full faith and credit to a final, exclusive state award. The proposed solution thereby creates a direct conflict between two federal statutes. However, inherent in the proposal is a recognition that the federal interest in providing a remedy under the Longshoremen's Act is so dominant as to preclude any attempted interference by the states. A holding of complete preemption in the first instance would vindicate the dominant federal interest without defeating the important policies of 28 U. S. C. § 1738. *See Landry v. Carlson Mooring Service*, 9 BRBS at 528.5-28.7 (Miller, Boardmember, dissenting).

Claimants' discussion of the provisions of the Federal Employer's Liability Act, 45 U. S. C. § 56, which permit the state courts to exercise jurisdiction concurrent with the federal courts for claims under the FELA is inapposite here. (Brief for Claimants at 22-23). This grant of jurisdiction to hear FELA cases does not allow the states

to decide cases under substantive state law principles. To the contrary, as the court stated in *State ex rel. Burlington Northern, Inc. v. District Court*, 169 Mont. 480, 484-85, 548 P. 2d 1390, 1392-93 (1976):

> While the FELA provides that suits may be filed in either federal or state courts, there can be no question that the rights created by the Act are governed by the decisions of the federal courts. *Bowman v. Illinois Central Railroad Co.*, 11 Ill. 2d 186, 142 N. E. 2d 104, *cert. den.*, 355 U. S. 837, 78 S. Ct. 63, 2 L. Ed. 2d 49. With the enactment of FELA, Congress took over the field of employers' liability to employees in interstate transportation by rail, and all state laws upon the subject were superseded. The rights and obligations of an employee and the employer depend on the FELA as construed by the federal courts.

Accord, Dice v. Akron, Canton & Youngstown R. R. Co., 342 U. S. 359, 361-62 (1952).

For all the reasons set forth in Sun Ship's opening brief, the Longshoremen's Act, like the FELA, provides an exclusive and comprehensive remedy for workers covered thereunder.[4] The fact that Congress established a specialized tribunal, the Benefits Review Board, to hear all ap-

4. Claimants' unsupported suggestion that the remedy provided by the Longshoremen's Act "does not provide anything approaching a comprehensive scheme of rights and liabilities to replace the diverse state laws applicable to injuries covered" is totally wrong. Only a cursory review of the Act's provisions belies appellee's position. For example, the Act and the regulations promulgated thereunder provide a complete procedural system for disposing of both contested and uncontested claims, a complete system for determining the length and amount of compensation due as well as provisions regarding rehabilitation, survivor's benefits, second injury fund, and adjustment of awards. *See Nations v. Morris*, 483 F. 2d 577, 581, *cert. denied* 414 U. S. 1071 (1973); *cf. United States v. Demko*, 385 U. S. 149, 152-53 (1966).

peals of Longshoremen's Act cases in the first instance, thereby fostering uniformity in the Act's construction and application, is yet another indicium of Congress' intent to provide a uniform federal compensation remedy for maritime workers to the exclusion of state law.

III. An Exclusive Federal Remedy for Maritime Workers Covered by the Longshoremen's Act Will Provide a Dependable Compensation System Which Is Fair to Both Employers and Employees

"Any legislative scheme that compensates workmen or their families for industrial mishaps should be capable of simple and dependable enforcement." *Davis v. Washington Department of Labor and Industries,* 317 U. S. at 256 (Frankfurter, J., concurring). In addition, the legitimate interests and rights of an employer under a compensation statute should be considered in determining what compensation remedy is available to injured maritime workers. *See Employers' Liability Assurance Co. v. Cook,* 281 U. S. 233 (1930). Harkening back to the pre-1972 confusion, claimants and the *amici* apparently argue that a system of concurrent jurisdiction will somehow promote a fairer, more certain system by allegedly reducing the number of jurisdictional disputes and by permitting injured maritime workers to pursue either the state or the federal remedy.

The concurrent jurisdiction for which claimants argue will not have the intended effect of eliminating jurisdictional disputes. It must be remembered that on each side of the proposed zone of concurrent jurisdiction there would remain areas of exclusive jurisdiction by virtue of the constitutional infirmity against state compensation remedies for injuries occurring within the area of exclusive federal maritime jurisdiction recognized in *Jensen,* on the one hand, *see, e.g., Wixom v. Travelers*

Insurance Co., 357 So. 2d 1343 (La. Cir. Ct. App. 1978), and the limits of the coverage of the Longshoremen's Act on the other. *See, e.g., Dravo Corp. v. Banks,* 567 F. 2d 593 (3d Cir. 1977). Thus, claimants proposed construction of the Act would result in *two* lines separating exclusive federal and state jurisdiction from the proposed zone of concurrent jurisdiction, one of which would be the very line which caused the jurisdictional confusion prior to 1972. Furthermore, such a construction would create a disuniformity among maritime workers at a single shipyard or port because workers within the area of exclusive federal jurisdiction would not have the election to proceed under state law advocated by claimants for workers injured on land. To allow such disparity "would contribute neither to uniformity nor to fairness. . . . As the Government has created a comprehensive system to award payments for injuries, it should not be held to have made exceptions to that system without specific legislation to that effect." *Johansen v. United States,* 343 U. S. 427, 441 (1952).

On the other hand, an exclusive federal system, given the location of the line drawn by Congress in 1972, will tend to minimize jurisdictional disputes. Because of the nature of maritime employment, wherein workers are often engaged in activities at or near the water's edge, the water's edge is probably the worst possible dividing line between federal and state coverage. Add to this the uncertainty of the "maritime but local" test which determines jurisdiction on the basis of the nature of the work performed at the time of injury, and the situation becomes hopeless, as the pre-1972 experience has shown.

As a result of the 1972 amendments, however, the geographical dividing line has been moved inland from the water's edge, where a significant portion of a maritime

worker's activity takes place and thus where injuries are most likely to occur. The federal remedy now reaches all areas "customarily used by an employee in loading, unloading, repairing or building a vessel." Longshoremen's Act, § 3(a), 33 U. S. C. § 903(a). For an employer such as Sun Ship, this definition would include virtually the entire shipyard, so that from the time an employee reports to work until he departs at the end of the day he will be in a covered situs. *Cf. P. C. Pfeiffer Co. v. Ford,* 100 S. Ct. 328, 334-36 (1979). In addition, as this Court held in *Northeast Marine Terminal Co. v. Caputo,* 432 U. S. 249 (1977), the status test of Section 2(3) of the Act, 33 U. S. C. § 902(3), does not look solely to the nature of the work at the time of the injury but rather covers throughout the working day workers who "spend at least some of their time in indisputably longshoring [ship repair or shipbuilding] operations and who, without the amendments, would be covered for only part of their activity." 432 U. S. at 273. Such a system affirmatively supports Sun Ship's interest as a self-insured employer in administering a single compensation system applicable to all, or virtually all, of its work force which is exposed to the hazards of shipbuilding and ship repair.[5]

While it is undoubtedly the case that jurisdictional questions will arise at the edge of the expanded coverage, it is plainly wrong to suggest that a holding of exclusive federal coverage will recreate the jurisdictional problems of the pre-1972 era. In any event, the possibility that

5. This interest includes the elimination of multiple transaction costs which would necessarily be incurred if claims relating to a single injury were filed under two or more compensation systems and the more certain application of substantive legal principles which will follow from the uniform interpretation of a single statutory scheme by the Benefits Review Board and the federal appellate courts. *See Flowers v. Travelers Insurance Co.,* 258 F. 2d 220, 225 (5th Cir. 1958), *cert. denied,* 359 U. S. 920 (1959).

some questions are left unresolved is not a reason to decline to give full effect to Congress' purpose. Congress has established a system which applies to maritime workers under a comprehensive statute throughout the day in all the areas where their work would normally take them. It would defeat Congress' desire to achieve uniformity to allow some of those maritime workers to recover under state law.

Claimants further argue that a finding of exclusive federal coverage would prejudice workers who mistakenly file claims under state acts which are dismissed for lack of jurisdiction because the federal period of limitations may have expired.[6] Once again, claimants' unsupported argument is wholly unfounded. Both the federal courts and the Benefits Review Board have determined that when a state claim is dismissed for lack of jurisdiction (or when a claimant voluntarily discontinues a mistakenly filed state claim), the period of limitations under the Longshoremen's Act is tolled during the pendency of the state proceedings. *Hollinhead v. Litton Systems, Inc.,* 6 BRBS 84 (1977), *aff'd per curiam,* 571 F. 2d 272 (5th Cir. 1978). *Accord, Wilson v. Donovan,* 218 F. Supp. 944 (E. D. La. 1963), *aff'd per curiam,* 328 F. 2d 313 (5th Cir.), *cert. denied,* 379 U. S. 816 (1964). In short, no claimant will lose benefits under the Act to which he is otherwise entitled if he initially chooses a state forum which has no jurisdiction over the claim.[7]

6. The brief of Local No. 6 discusses at some length the possibility that a worker who brings a federal claim which is subsequently dismissed may be time barred from pursuing state remedies. (Brief for Amicus Curiae at 14-15). Such a claimant would derive no benefit from a finding of concurrent jurisdiction, however, since the conclusion that the claimant is not covered by the Longshoremen's Act would be the same, irrespective of the exclusivity question.

7. In contrast to claimants' speculative fear that, absent concurrent jurisdiction, benefits may be lost to some employees, the presence of concurrent jurisdiction would plainly impose incon-

Finally, both claimants and Local No. 6 attempt to support their positions by suggesting that the Pennsylvania and Maine compensation acts provide advantages to claimants over the Longshoremen's Act. Of course, such advantages, even if they exist, cannot defeat Congress' intent to supersede state law; nor would such claimed advantages be available to maritime workers injured over actual navigable waters because no state has the power to provide its remedy to them. Moreover, this selective review of the provisions of these two statutes is far from conclusive in establishing their superiority and does nothing to establish the superiority of the compensation acts of other maritime states over the Longshoremen's Act. By contrast, in 1972 Congress specifically found compensation levels payable for permanent total disability in some of the maritime states, including Pennsylvania, to be inadequate. S. Rep. No. 1125, 92nd Cong., 2d Sess., 12 (1972); H. R. Rep. No. 1441, 92nd Cong., 2d Sess., 10 (1972).

More fundamentally, the asserted advantages do not withstand scrutiny. Without any support whatsoever, claimants state that the initial hearing of claims is much more prompt under the Pennsylvania Act.[8] Even if this is the case, however, a claimant under the Pennsylvania Act may wait much longer to receive benefits if an appeal is taken. The Longshoremen's Act allows the stay of benefit payments pending appeal only if the employer would be irreparably harmed if required to make payments. Longshoremen's Act § 21(b)(3), (c), 33 U. S. C. § 921(b)(3), (c). By contrast, the Pennsylvania Act allows consideration of any facts deemed relevant by the reviewing body in determining whether a supersedeas should be granted. Pa. Stat. Ann. tit. 77, § 971 (Purdon Supp. 1979-80). Indeed, while the claimants were all adjudged entitled to benefits under the Pennsylvania Act on December 8, 1977 or earlier (J. S. App. pp. A32, A57-A57, A63-A64, A68, A71-A72), none of them has received any amount of those benefits by virtue of the supersedeas entered in each case. Thus, the claimed advantage of an early disposition under the Pennsylvania Act is outweighed by the potential delay in payment of benefits.

Similarly, Local No. 6 contends that the Maine compensation statute favors the claimant by insuring that a hearing is held in which the employer bears the burden of proof before total disability benefits can be terminated for a change in conditions. Local No. 6 is wrong, however, when it states that no similar protection exists under the Longshoremen's Act. Section 22 of the Act, 33 U. S. C. § 922 requires that when an employer seeks for review of a compensation award on the ground of changed conditions the same procedure as for initial claims is followed, including a hearing if a dispute exists. The employer, as the moving party, would bear the burden of proof if a reduction in benefits is sought.

In short, while some advantages may exist under some state compensation statutes, there are also disadvantages which necessarily obtain once the state remedy is chosen, unless claimants are advocating a system whereby the injured worker can pick and choose the best provisions of the applicable state statute and the Longshoremen's Act.

7. (Cont'd.)
sistent obligations on employers, particularly before a claim is filed, as discussed at pages 49 through 56 of Sun Ship's opening brief. If the employer fails to meet these obligations, it may ultimately be penalized. *See Riley v. Eureka Van & Storage Co.*, 1 BRBS 449 (1975) (employer barred from raising statute of limitations defense to claim filed under District of Columbia Workmen's Compensation Act because it failed to file first report of injury with the deputy commissioner, although a similar report had been filed in Virginia).

8. A similar claim is made by Local No. 6 with respect to the Maine statute, again wholly without factual support.

Beyond the manifest lack of fairness to employers and those employees who cannot elect state remedies if such a system were allowed to operate, that is not what Congress intended in 1972 when it balanced the interests of maritime workers and maritime employers to create a comprehensive and exclusive federal compensation remedy.

CONCLUSION

For the reasons set forth above and in Sun Ship's opening brief, the judgment of the Commonwealth Court of Pennsylvania affirming the award of benefits to the five individual appellees should be reversed, and the cause remanded with instructions to dismiss the claims under the Pennsylvania Workmen's Compensation Act for lack of jurisdiction.

Respectfully submitted,

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